

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

**PETER ALLIA &
HEATHER JACKSON-ALLIA**

v.

**BOARD OF ASSESSORS OF
THE TOWN OF WEST NEWBURY**

Docket No. F338618

Promulgated:
December 1, 2021

This is an appeal filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65 from the refusal of the Board of Assessors of the Town of West Newbury ("appellee" or "assessors") to abate a tax on certain real estate in West Newbury, owned by and assessed to Peter Allia and Heather Jackson-Allia ("appellants") under G.L. c. 59, §§ 11 and 38, for fiscal year 2019 ("fiscal year at issue").

The parties submitted the appeal to the Appellate Tax Board ("Board") for a decision based on documentary evidence and written statements in accordance with 831 CMR 1.31. Commissioner Elliott ("Presiding Commissioner"), in accordance with G.L. c. 58A, § 1A and 831 CMR 1.20, issued a single-member decision for the appellee.

These findings of fact and report are made pursuant to a request by the appellants under G.L. c. 58A, § 13 and 831 CMR 1.32.

Peter Allia and Heather Jackson-Allia, pro se, for the appellants.

Michael McCarron, Esq. for the appellee.

FINDINGS OF FACT AND REPORT

Based on documentary evidence and written statements submitted to the Board, the Presiding Commissioner made the following findings of fact.

As of January 1, 2018, the relevant valuation and assessment date for the fiscal year at issue, the appellants were the assessed owners of a 2.06-acre parcel of improved land located in the Town of West Newbury with an address of 189 Crane Street ("subject property"). Information relevant to the Board's jurisdiction is summarized in the following chart:

Assessed valuation	Tax amount Tax rate	Taxes timely paid?	Abatement application filed	Abatement decision date	Petition filed with Board
\$382,700	\$5,575.94 ¹ \$14.57/\$1,000	Yes	02/01/2019	03/27/2019	06/27/2019 ²

Based on the foregoing, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide the instant appeal.

¹ This amount does not include the Community Preservation Act surcharge of \$123.57.

² The petition was date-stamped by the Board on July 1, 2019. For purposes of determining jurisdiction, if a petition is received after the due date, the date of mailing is deemed to be the date of delivery. See G.L. c. 58, § 7 and G.L. c. 59, §§ 64 and 65. The envelope containing the petition bore a United States Postal Service postmark of June 27, 2019. The Presiding Commissioner thus found and ruled that the petition was mailed, and thus filed, timely.

The subject property is improved with a single-family, Cape Cod-style residence built in 1986 and containing 2,123 square feet of above-basement living area, which is comprised of 8 rooms, including five bedrooms, as well as two full bathrooms, plus an additional 594 square feet of lower-level living area ("subject home"). The subject home is equipped with central air conditioning, and there is an underneath two-car garage. However, the subject home's septic system is not working. The appellants purchased the subject property in November 2016 for \$345,000.

The appellants presented their overvaluation case by first citing perceived deficiencies with the subject property that they claimed were not adequately recorded on the property record card. They submitted a letter from their insurance company indicating that their homeowner's insurance would be cancelled unless several deferred maintenance items were completed, including painting parts of the exterior, repairing the roof, and installing exterior railings at the entrance. The appellants further claimed that they would not be able to live in the subject home with the nonfunctioning septic system but for a special certificate issued by the Board of Health. They claimed they had overpaid in a rising market and that they never would have paid the sale price had they been aware of all the problems with the subject property. The appellants further claimed errors in the square footage and living

areas on the property record card maintained by the appellee, but they did not submit evidence specifically supporting this claim.

The appellants next provided a comparable-sales analysis consisting of fifteen sales of purportedly comparable properties, four from West Newbury and the remaining eleven from surrounding towns. These sales had occurred during calendar years 2017 and 2018, for prices ranging from \$100,000 to \$300,000. The analysis listed the properties' addresses, sale dates, sale prices, and distance from the subject property. The appellants did not provide adjustments to their purportedly comparable properties' sale prices to account for differences between those properties and the subject property.

Based on their evidence, the appellants' conclusion of fair cash value for the subject property for the fiscal year at issue was \$287,000.

In defense of the assessment, the appellee submitted a statement by Christian Kuhn, Chief Assessor for West Newbury. Mr. Kuhn cited the rising housing market in West Newbury in the years since the appellants' purchase of the subject property in 2016, reporting that in the following fiscal years 2018 and 2019, the average single-family property in West Newbury experienced increases in value of 1.5 percent and 5.7 percent, respectively.

Mr. Kuhn next maintained that the assessment accurately reflected the subject property's condition. He first refuted the

depiction of the condition of the subject property as uninhabitable, highlighting that the appellants have been living in the subject home since its purchase, and that they had purchased the subject property with full knowledge that the septic system required repair. The assessors further noted that the condition of the subject property on the property record card was listed as poor with a grade of D-, the lowest possible grade, which Mr. Kuhn maintained sufficiently accounted for the septic system issue. Finally, Mr. Kuhn referred to repairs that the appellants had made to the subject property since its purchase, particularly the installation of a new roof and solar panels in 2019.

Based on the evidence, the Presiding Commissioner found that the appellants failed to meet their burden of proving a lower value for the subject property than its assessed value for the fiscal year at issue. The appellants first failed to demonstrate any errors on the property record card that adversely affected the appellee's assessment of the subject property's fair cash value. The Presiding Commissioner was instead persuaded by Mr. Kuhn's statement that the condition grade of D-, which was the lowest possible grade for a residential property in the community, adequately accounted for the nonfunctioning septic system, of which the appellants were aware at the time of the subject property's purchase, as well as other defects in the subject property. Additionally, the appellants' comparable-sales

properties were not shown to be sufficiently comparable to the subject property in key features that typically affect fair cash value, including but not limited to lot size, gross living area, room count, and number of bedrooms and bathrooms. Because of these differences, the Presiding Commissioner was unable to find an indicated value for the subject property from these comparable-sale properties.

Moreover, the assessment for the fiscal year at issue reflected the purchase price that the appellants paid less than fourteen months prior to the relevant assessment date, plus a modest increase to reflect the improving housing market in those subsequent months as well as the improvements that the appellants made to the subject property. The Presiding Commissioner thus found and ruled that the assessment appropriately reflected the subject property's fair cash value for the fiscal year at issue.

Accordingly, the Presiding Commissioner issued a decision for the appellee in this appeal.

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OPINION

Assessors are required to assess real estate at its fair cash value. G.L. c. 59, § 38. Fair cash value is defined as the price on which a willing seller and a willing buyer in a free and open market will agree if both are fully informed and under no compulsion. *Boston Gas Co. v. Assessors of Boston*, 334 Mass. 549, 566 (1956).

A taxpayer has the burden of proving that a property has a lower value than that assessed: "The burden of proof is upon the petitioner to make out its right as [a] matter of law to [an] abatement of the tax." *Schlaiker v. Assessors of Great Barrington*, 365 Mass. 243, 245 (1974) (quoting *Judson Freight Forwarding Co. v. Commonwealth*, 242 Mass. 47, 55 (1922)). "[T]he board is entitled to 'presume that the valuation made by the assessors [is] valid unless the taxpayers . . . prov[e] the contrary.'" *General Electric Co. v. Assessors of Lynn*, 393 Mass. 591, 598 (1984) (quoting *Schlaiker*, 365 Mass. at 245).

In appeals before the Board, a taxpayer "may present persuasive evidence of overvaluation either by exposing flaws or errors in the assessors' method of valuation, or by introducing affirmative evidence of value which undermines the assessors' valuation." *General Electric Co.*, 393 Mass. at 600 (quoting *Donlon v. Assessors of Holliston*, 389 Mass. 848, 855 (1983)).

In the instant appeal, the appellants claimed that the assessors inadequately reported the subject property's condition on the property record card, claiming that the subject home was inhabitable and that the appellants were occupying it only by concession from the Board of Health. However, the Presiding Commissioner found persuasive Mr. Kuhn's explanation that the subject property had a condition grade of D- for the fiscal year at issue, which is the lowest grade offered by the assessors and adequately accounted for the nonfunctioning septic system as well as other flaws. The Presiding Commissioner further found persuasive Mr. Kuhn's statement that the subject property's assessed value properly accounted for an improving housing market.

The appellants further offered a comparable-sales analysis using purportedly comparable properties. Sales of comparable realty in the same geographic area and within a reasonable time of the assessment date contain credible data and information for determining the value of the property at issue. See **McCabe v. Chelsea**, 265 Mass. 494, 496 (1929). "A major premise of the sales comparison approach is that an opinion of the market value of a property can be supported by studying the market's reaction to comparable and competitive properties." Appraisal Institute, *THE APPRAISAL OF REAL ESTATE* 351 (15th ed., 2020).

However, in the instant appeal, the appellants' purportedly comparable properties were not sufficiently comparable to the

subject property to provide for a meaningful comparison, primarily because they were not shown to be sufficiently similar with respect to key features that typically affect fair cash value. Properties used in a comparable-sales analysis must be sufficiently comparable to the subject property to provide probative, meaningful evidence of value. See ***Diamond Ledge Properties Corp. v. Assessors of the Town of Swansea***, Mass. ATB Findings of Fact and Reports 2009-1185, 1192. The Presiding Commissioner thus found and ruled that the appellants' comparable-sales analysis did not provide probative evidence of the fair cash value of the subject property.

Moreover, the appellants purchased the subject property less than fourteen months from the relevant assessment date. Actual sales of the subject property generally provide "very strong evidence of fair market value, for they represent what a buyer has been willing to pay to a seller for [the] particular property [under appeal]." ***New Boston Garden Corp. v. Assessors of Boston***, 383 Mass. 456, 469 (1981), (quoting ***First National Stores, Inc. v. Assessors of Somerville***, 358 Mass. 554, 560 (1971)). The Presiding Commissioner found that the sale price paid by the appellants, plus a modest increase for the solar and roof repairs as well as an improving housing market, fairly reflected the fair cash value for the subject property.

Based on the evidence of record, the Presiding Commissioner found and ruled that the appellants failed to meet their burden of proving a fair cash value for the subject property that was lower than its assessed value for the fiscal year at issue.

Accordingly, the Presiding Commissioner issued a decision for the appellee in the instant appeal.

THE APPELLATE TAX BOARD

By: /s/ Steven G. Elliott
Steven G. Elliott, Commissioner

A true copy,

Attest: /s/ William J. Doherty
Clerk of the Board